

**Remarks/Arguments:**

Claims 1, 3, 10, 12, 16-19, 21-22, 28-29 and 31-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,926,468 (Chapman) in view of U.S. Patent No. 7,032,153 (Zhang).

Claims 2, 11, 20, 23, 30 and 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Zhang, and further in view of U.S. Patent No. 6,912,387 (Haas).

Claims 4-9, 13-15 and 27 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Zhang, and further in view of U.S. Publication No. 2004/0151136 (Gage).

Claims 24-26, 34-36, 39-40 and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Zhang, and further in view of U.S. Patent No. 5,682,460 (Hyziak).

Claims 37 and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Zhang, and further in view of U.S. Patent No. 6,771,594 (Upadrasta).

Claims 39 and 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Zhang, and further in view of U.S. Patent No. 7,486,634 (Itoh).

Claims 41 and 44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of Zhang, and further in view of U.S. Published Application No. 2005/0165948 (Hatime).

Applicant respectfully disagrees that the subject claims are unpatentable, for at least the reasons set out below.

The claims have been amended to further distinguish over the cited combination of art. In particular, claim 1 has been amended to recite, in part:

"said determined quality including a transmission profile comprising a record of successful transmissions from said device or of signal strengths for a previous time period;

developing a retry strategy for said transmitting step based on said determined quality, said developing including identifying portions of said previous time period during which successful transmissions are recorded in said transmission profile"

Applicant notes that similar amendments have been made to claims 10 and 16. As a result of these amendments, claims 24, 25, 34, 35, 40 and 43 have been cancelled, thus rendering their rejections moot.

### **Missing Limitations**

Applicant notes that in order to support a rejection under 35 U.S.C. 103(a), the Examiner must show that the asserted combination of art teaches or suggests each and every limitation of the rejected claim:

"When determining whether a claim is obvious, an examiner must make a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*,

349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974))."

*Ex Parte Wada and Murphy*, Appeal No. 2007-3733, Bd. Pat. App. & Inter., January 14, 2008. The Examiner's asserted combination of art fails to satisfy at least one limitation of the claims, and the claim rejections therefore cannot be maintained. Specifically, Applicant submits that the following features of claim 1 as amended are not satisfied by the asserted combination of art:

"developing a retry strategy for said transmitting step based on said determined quality, said developing including identifying portions of said previous time period during which successful transmissions are recorded in said transmission profile"

Applicant notes that the above-recited features of claim 1 were previously recited in claim 40. At pages 7 and 8 of the Final Rejection, the Examiner rejected claim 40 as being obvious in view of Chapman, Zhang and Hyziak. Specifically, the Examiner stated that "Hyziak teaches determined quality is a transmission profile, said transmission profile is a record of successful transmissions from said device or of signal strengths for an identified portions of previous time period...".

Applicant notes that the above statement from the Final Rejection does not accord with the actual language of the claims. In particular, claim 1 does not recite "...a record of successful transmissions from said device or of signal strengths for an identified portions of previous time period". On the contrary, claim 1 recites "identifying portions of said previous time period during which successful transmissions are recorded in said transmission profile". That is, claim 1 recites an active "identifying" step, while the Examiner did not assert any

teaching of such a step. For at least this reason, the showing that each and every limitation of claim 1 is satisfied by the asserted combination of art has not been made, and the rejection should be withdrawn.

Further, Applicant submits that Hyziak fails to satisfy the above-recited features of claim 1. Hyziak's status field is used by recipient devices to report various details relating to transmissions back to the sender of those transmissions, as well as by the sender to record information about the transmissions (see column 5, lines 11-24 of Hyziak). At block 412, Hyziak stores a record of the transmitted message to a database. The Examiner referred to the status field as satisfying Applicant's transmission profile. However, Hyziak makes no mention of identifying portions of a previous time period during which successful transmissions are recorded in a transmission profile. In fact, Hyziak fails to mention **any** identifying step whatsoever relating to the status field.

The legally required showing that each and every limitation of claim 1 is satisfied by the asserted combination of art has therefore not been made, and the rejection of claim 1 should be withdrawn.

Claim 1 is therefore patentable for at least the above reasons, as are claims 10 and 16 which recite features similar to those of claim 1. All remaining claims depend on claim 1 or claim 10, and are therefore also patentable for at least the above reasons.

Reconsideration and allowance of all pending claims is respectfully requested.

**Conclusion:**

Applicant believes that this application is now in condition for allowance. To the extent that any issues remain to be resolved, however, Applicant requests that the Examiner contact the undersigned to resolve these issues.

The Commissioner is also authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-3750.

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Respectfully submitted,



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